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*Attorney for Plaintiff*

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 GATEWAY INSURANCE COMPANY, a  
11 Missouri corporation.

12 Plaintiff.

13 || VS.

14 ALEXANDER FERNANDEZ-LEON, an  
15 individual; YENDRY HERNANDEZ-  
16 ECHEVARRIA, an individual; GRETSIN  
17 CONSUEGRA SORIANO, an individual;  
18 JUAN SCHUEG-CASTRO, an individual;  
JOSE PRIETO-HERNANDEZ, an individual;  
NELLIS CAB LLC, OPERATION SERIES  
NELLIS CAB LLC, VEH. SERIES 102, a  
Nevada series limited liability company,

10 || Defendants.

Case No.: 2:19-cv-00771-APG-BNW

**JOINT MOTION TO DISMISS CASE  
WITHOUT PREJUDICE PURSUANT  
TO FRCP 41(a)(2)**

20 Plaintiff Gateway Insurance Company (“Plaintiff”) by and through its counsel of record,  
21 Scott A. Flinders and Todd W. Prall of the law firm Hutchison & Steffen, PLLC, and  
22 Defendants Yendry Hernandez-Echevarria, Gretsin Consuegra Soriano, Juan Schueg-Castro,  
23 and Jose Prieto-Hernandez (“Defendants”), by and through their counsel, Joseph A. Gutierrez  
24 and Stephen G. Clough of Maier Gutierrez and Associates jointly move the Court for an order  
25 dismissing this case without prejudice pursuant to FRCP 41(a)(2).

26 Plaintiff and Defendants would submit a stipulation to dismiss without prejudice  
27 pursuant to FRCP 41(a)(1), but the attorney of record for Nellis Cab, LLC, another defendant in  
28 this case, has informed Plaintiff and Defendants that he is no longer authorized to represent

1 Nellis Cab, LLC. No counsel has been located who has been authorized to appear in this action  
2 on behalf of Nellis Cab, LLC. Nellis Cab, LLC is, however, represented by new counsel in the  
3 underlying state court action and dismissal of this case without prejudice will not affect or  
4 hinder Nellis Cab, LLC's ability to defend the underlying action.

5 Plaintiff had filed a Motion for Stay Due to Gateway Insurance Company's Liquidation  
6 ("Motion for Stay") (Doc. #56), which Defendants opposed (Doc. #57), and Defendants also  
7 filed a Countermotion to Dismiss for Want of Prosecution ("Countermotion") (Doc. #58).

8 FRCP 41(a)(1) provides that a Plaintiff may dismiss an action without prejudice if it  
9 files the notice of dismissal before an answer or motion for summary judgment is served or with  
10 a stipulation of dismissal signed by all parties who have appeared. FRCP 41(a)(2) provides that  
11 except as provided in Rule 41(a)(1), an action may be dismissed at plaintiff's request by court  
12 order, "on terms that the court considers proper." The rule further states that "If a defendant has  
13 pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action  
14 may be dismissed over the defendant's objection only if the counterclaim can remain pending  
15 for independent adjudication." Here, neither the defendants joining the motion nor Nellis Cab,  
16 LLC has pleaded a counterclaim. Further, as noted above, a dismissal without prejudice will  
17 not prejudice Nellis Cab, LLC in defending the claims brought against it in the underlying state  
18 court action.

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1       Based on these facts Plaintiff hereby agreed to withdraw the Motion to Stay, Defendants  
2 hereby agree to withdraw the Counter motion, and Plaintiff and Defendants jointly move the  
3 dismiss the action without prejudice pursuant to FRCP 41(a)(2).

4       DATED this 18<sup>th</sup> day of September, 2020.

5       HUTCHISON & STEFFEN, PLLC

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7       \_\_\_\_\_  
8       /s/ *Todd W. Prall*       \_\_\_\_\_  
9       Scott A. Flinders (6975)  
10      Todd W. Prall (9154)  
11      HUTCHISON & STEFFEN, PLLC  
12      Peccole Professional Park  
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14      Las Vegas, Nevada 89145

15  
16      *Attorneys for Plaintiff*

17       DATED this 18<sup>th</sup> day of September, 2020.

18       MAIER GUTIERREZ & ASSOCIATES

19  
20       \_\_\_\_\_  
21       /s/ *Stephen G. Clough*       \_\_\_\_\_  
22       Joseph A. Gutierrez (9046)  
23       Stephen G. Clough (10549)  
24       8816 Spanish Ridge Avenue  
25       Las Vegas, Nevada 89148

26  
27      *Attorneys for Defendants Yendry  
28      Hernandez-Echeverria, Gretsin  
29      Consuegra Soriano, Juan Schueg-Castro,  
30      and Jose Preito-Hernandez*

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32      IT IS SO ORDERED: September 18, 2020

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36      ANDREW P. GORDON  
37      UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

2 Pursuant to FRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
3 PLLC and that on this 18<sup>th</sup> day of September, 2020, I caused the above and foregoing document  
4 entitled ***JOINT MOTION TO DISMISS CASE WITHOUT PREJUDICE PURSUANT TO***  
5 ***FRCP 41(a)(2)*** to be served as follows:

6

7 through CM/ECF and the court's electronic filing system

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/s/ *Bobbie Benitez*  
An employee of Hutchison & Steffen, PLLC

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